

REFERENCE TITLE: sales tax exemption; nonprofit housing

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1078

Introduced by
Senator Waring: Representative Driggs

AN ACT

AMENDING SECTIONS 41-3953 AND 42-5075, ARIZONA REVISED STATUTES; RELATING TO
THE PRIME CONTRACTING TRANSACTION PRIVILEGE TAX CLASSIFICATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-3953, Arizona Revised Statutes, is amended to
3 read:

4 41-3953. Department powers and duties

5 A. The department is responsible for establishing policies, procedures
6 and programs that the department is authorized to conduct to address the
7 affordable housing issues confronting this state, including housing issues of
8 low income families, moderate income families, housing affordability, special
9 needs populations and decaying housing stock. Among other things, the
10 department shall provide to qualified housing participants and political
11 subdivisions of this state financial, advisory, consultative, planning,
12 training and educational assistance for the development of safe, decent and
13 affordable housing, including housing for low and moderate income households.

14 B. Under the direction of the director, the department shall:

15 1. Establish guidelines applicable to the programs and activities of
16 the department for the construction and financing of affordable housing and
17 housing for low and moderate income households in this state. These
18 guidelines shall meet or exceed all applicable state or local building and
19 health and safety code requirements and, if applicable, the national
20 manufactured home construction and safety standards act of 1974 and title VI
21 of the housing and community development act of 1974 (P.L. 93-383, as amended
22 by P.L. 95-128, 96-153 and 96-339). Guidelines established pursuant to this
23 paragraph do not apply to the department's activities prescribed in section
24 35-726, subsection E.

25 2. Provide staff support to the Arizona housing commission and
26 coordinate its activities.

27 3. Accept and allocate any monies as from time to time may be
28 appropriated by the legislature for the purposes set forth in this article.

29 4. Perform other duties necessary to administer this chapter.

30 5. Perform the duties prescribed in sections 35-726, 35-728 and 35-913
31 and chapter 4.3 of this title.

32 6. Stimulate and encourage all local, state, regional and federal
33 governmental agencies and all private persons and enterprises that have
34 similar and related objectives and purposes, cooperate with the agencies,
35 persons and enterprises and correlate department plans, programs and
36 operations with those of the agencies, persons and enterprises.

37 7. Conduct research on its own initiative or at the request of the
38 governor, the legislature or state or local agencies pertaining to any
39 department objectives.

40 8. Provide information and advice on request of any local, state or
41 federal agencies, private persons and business enterprises on matters within
42 the scope of department activities.

43 9. Consult with and make recommendations to the governor and the
44 legislature on all matters concerning department objectives.

1 10. Make annual reports to the governor and the legislature on its
2 activities, including the geographic location of its activities, its finances
3 and the scope of its operations.

4 C. Under the direction of the director, the department may:

5 1. Assist in securing construction and mortgage financing from public
6 and private sector sources.

7 2. Assist mortgage financing programs established by industrial
8 development authorities and political subdivisions of this state.

9 3. Assist in the acquisition and use of federal housing assistance
10 programs pertinent to enhance the economic feasibility of a proposed
11 residential development.

12 4. Assist in the compliance of a proposed residential development with
13 applicable federal, state and local codes and ordinances.

14 5. Prepare and publish planning and development guidelines for the
15 establishment and delivery of housing assistance programs.

16 6. Contract with a federal agency to carry out financial work on the
17 federal agency's behalf and accept payment for the work.

18 7. Subcontract for the financial work prescribed in paragraph 6 of
19 this subsection and make payments for that subcontracted work based on the
20 expectation that the federal agency will pay for that work.

21 8. Accept payment from a federal agency for work prescribed in
22 paragraph 6 of this subsection and deposit those payments in the Arizona
23 department of housing program fund established by section 41-3957.

24 9. Contract for the services of outside advisers, consultants and
25 aides reasonably necessary or desirable to enable the department to
26 adequately perform its duties.

27 10. Contract and incur obligations reasonably necessary or desirable
28 within the general scope of department activities and operations to enable
29 the department to adequately perform its duties.

30 11. Use any media of communication, publication and exhibition in the
31 dissemination of information, advertising and publicity in any field of its
32 purposes, objectives or duties.

33 12. Adopt rules deemed necessary or desirable to govern its procedures
34 and business.

35 13. Contract with other agencies in furtherance of any department
36 program.

37 14. Use monies, facilities or services to provide contributions under
38 federal or other programs that further the objectives and programs of the
39 department.

40 15. Accept gifts, grants, matching monies or direct payments from
41 public or private agencies or private persons and enterprises for the conduct
42 of programs that are consistent with the general purposes and objectives of
43 this article and deposit these monies in the Arizona department of housing
44 program fund established by section 41-3957.

1 16. Establish and collect fees and receive reimbursement of costs in
2 connection with any programs or duties performed by the department and
3 deposit the fees and cost reimbursements in the Arizona department of housing
4 program fund established by section 41-3957.

5 17. Provide staff support to the Arizona housing finance authority and
6 coordinate its activities.

7 D. For the purposes of this section, the department is exempt from
8 chapter 23 of this title.

9 E. The department is the designated state public housing agency as
10 defined in the United States housing act of 1937 (42 United States Code
11 sections 1401 through 1440) for the purpose of accepting federal housing
12 assistance monies and may participate in the housing assistance payments
13 program. Federal monies may be secured for all areas of this state subject
14 only to the limitations prescribed in subsection F of this section.

15 F. For areas of this state where an existing public housing authority
16 has not been established pursuant to section 36-1404, subsection A, the
17 department acting as a public housing agency may undertake all activities
18 under the section 8 tenant-based rental housing assistance payment program,
19 except that the department shall not undertake a section 8 tenant-based
20 rental housing assistance payment program within the boundaries of a city,
21 town or county unless authorized by resolution of the governing body of the
22 city, town or county. If the department accepts monies for a section 8
23 tenant-based rental housing assistance payment program for areas of this
24 state where an existing public housing authority has been established
25 pursuant to section 36-1404, subsection A, the department shall only accept
26 and secure federal monies to provide housing for the seriously mentally ill
27 or other disabled populations. The department may accept and secure federal
28 monies for undertaking all contract administrator activities authorized under
29 a section 8 project-based rental housing assistance payment program in all
30 areas of this state and this participation does not require the authorization
31 of any local governing body.

32 G. The department shall not itself directly own, construct, operate or
33 rehabilitate any housing units, except as may be necessary to protect the
34 department's collateral or security interest arising out of any department
35 programs.

36 H. Notwithstanding any other provision of this section, the department
37 may obligate monies as loans or grants applicable to programs and activities
38 of the department for the purpose of providing housing opportunities for low
39 or moderate income households or for housing affordability or to prevent or
40 combat decaying housing stock. Unless otherwise required by federal or state
41 law, any loan repayments shall be deposited in the Arizona department of
42 housing program fund established by section 41-3957.

43 I. For any construction project financed by the department pursuant to
44 subsection C, except for contract administration activities in connection
45 with the project-based section 8 program, the department shall notify a city,

1 town, county or tribal government that a project is planned for its
2 jurisdiction and, before proceeding, shall seek comment from the governing
3 body of the city, town, county or tribal government or an official authorized
4 by the governing body of the city, town, county or tribal government. The
5 department shall not interfere with or attempt to override the local
6 jurisdiction's planning, zoning or land use regulations.

7 J. THE DEPARTMENT SHALL ISSUE WRITTEN CERTIFICATES TO NONPROFIT
8 CHARITABLE ORGANIZATIONS THAT QUALIFY UNDER SECTION 501(c)(3) OF THE INTERNAL
9 REVENUE CODE AND THAT HAVE A PRIMARY PURPOSE OF ENTERING INTO CONTRACTS FOR
10 THE ORIGINAL CONSTRUCTION OF SINGLE FAMILY RESIDENTIAL HOUSING AND SELLING
11 THE COMPLETED RESIDENTIAL HOUSING TO FAMILIES IN THIS STATE WHOSE HOUSEHOLD
12 INCOME IS LESS THAN EIGHTY PER CENT OF THE MEDIAN FAMILY INCOME OF THIS
13 STATE. THE PURPOSE OF APPLYING FOR A WRITTEN CERTIFICATE UNDER THIS SECTION
14 IS FOR THE NONPROFIT CHARITABLE ORGANIZATION TO PRESENT A COPY OF THE
15 CERTIFICATE TO A PRIME CONTRACTOR UNDER SECTION 42-5075, SUBSECTION B,
16 PARAGRAPH 22. TO RECEIVE A WRITTEN CERTIFICATE, NONPROFIT CHARITABLE
17 ORGANIZATIONS SHALL APPLY TO THE DEPARTMENT ON A FORM PRESCRIBED BY THE
18 DEPARTMENT. THE APPLICATION SHALL BE SIGNED BY AN OFFICER OF THE
19 ORGANIZATION UNDER PENALTY OF PERJURY. A NONPROFIT CHARITABLE ORGANIZATION
20 SHALL SUBMIT SEPARATE APPLICATIONS TO THE DEPARTMENT FOR EACH CONTRACT
21 ENTERED INTO WITH A PRIME CONTRACTOR FOR WHICH A DEDUCTION WILL BE CLAIMED BY
22 THE PRIME CONTRACTOR UNDER SECTION 42-5075, SUBSECTION B, PARAGRAPH 22. THE
23 DEPARTMENT SHALL REVIEW EACH APPLICATION AND DETERMINE WHETHER TO ISSUE THE
24 WRITTEN CERTIFICATE TO THE NONPROFIT CHARITABLE ORGANIZATION. DURING EACH
25 FISCAL YEAR, THE DEPARTMENT MAY ISSUE ONLY ONE THOUSAND WRITTEN CERTIFICATES.
26 THE APPLICATION SHALL INCLUDE THE FOLLOWING:

- 27 1. VERIFICATION THAT THE ORGANIZATION IS EXEMPT FROM TAXES UNDER
28 SECTION 501(c)(3) OF THE INTERNAL REVENUE CODE.
- 29 2. A STATEMENT THAT THE ORGANIZATION IS CONSTRUCTING AN ORIGINAL
30 SINGLE FAMILY RESIDENTIAL HOME AND IS SELLING THE COMPLETED RESIDENTIAL HOME
31 TO AN INDIVIDUAL IN THIS STATE WHOSE HOUSEHOLD INCOME IS LESS THAN EIGHTY PER
32 CENT OF THE MEDIAN FAMILY INCOME OF THIS STATE.
- 33 3. ANY OTHER INFORMATION THAT IS REQUIRED BY THE DEPARTMENT.

34 Sec. 2. Section 42-5075, Arizona Revised Statutes, is amended to read:
35 42-5075. Prime contracting classification; exemptions;
36 definitions

37 A. The prime contracting classification is comprised of the business
38 of prime contracting and dealership of manufactured buildings. Sales for
39 resale to another dealership of manufactured buildings are not subject to
40 tax. Sales for resale do not include sales to a lessor of manufactured
41 buildings. The sale of a used manufactured building is not taxable under
42 this chapter. The proceeds from alteration and repairs to a used
43 manufactured building are taxable under this section.

44 B. The tax base for the prime contracting classification is sixty-five
45 per cent of the gross proceeds of sales or gross income derived from the

1 business. The following amounts shall be deducted from the gross proceeds of
2 sales or gross income before computing the tax base:

3 1. The sales price of land, which shall not exceed the fair market
4 value.

5 2. Sales and installation of groundwater measuring devices required
6 under section 45-604 and groundwater monitoring wells required by law,
7 including monitoring wells installed for acquiring information for a permit
8 required by law.

9 3. The sales price of furniture, furnishings, fixtures, appliances,
10 and attachments that are not incorporated as component parts of or attached
11 to a manufactured building or the setup site. The sale of such items may be
12 subject to the taxes imposed by article 1 of this chapter separately and
13 distinctly from the sale of the manufactured building.

14 4. The gross proceeds of sales or gross income received from a
15 contract entered into for the construction, alteration, repair, addition,
16 subtraction, improvement, movement, wrecking or demolition of any building,
17 highway, road, railroad, excavation, manufactured building or other
18 structure, project, development or improvement located in a military reuse
19 zone for providing aviation or aerospace services or for a manufacturer,
20 assembler or fabricator of aviation or aerospace products within an active
21 military reuse zone after the zone is initially established or renewed under
22 section 41-1531. To be eligible to qualify for this deduction, before
23 beginning work under the contract, the prime contractor must have applied for
24 a letter of qualification from the department of revenue.

25 5. The gross proceeds of sales or gross income derived from a contract
26 to construct a qualified environmental technology manufacturing, producing or
27 processing facility, as described in section 41-1514.02, and from subsequent
28 construction and installation contracts that begin within ten years after the
29 start of initial construction. To qualify for this deduction, before
30 beginning work under the contract the prime contractor must obtain a letter
31 of qualification from the department of revenue. This paragraph shall apply
32 for ten full consecutive calendar or fiscal years after the start of initial
33 construction.

34 6. The gross proceeds of sales or gross income from a contract to
35 provide for one or more of the following actions, or a contract for site
36 preparation, constructing, furnishing or installing machinery, equipment or
37 other tangible personal property, including structures necessary to protect
38 exempt incorporated materials or installed machinery or equipment, and
39 tangible personal property incorporated into the project, to perform one or
40 more of the following actions in response to a release or suspected release
41 of a hazardous substance, pollutant or contaminant from a facility to the
42 environment, unless the release was authorized by a permit issued by a
43 governmental authority:

44 (a) Actions to monitor, assess and evaluate such a release or a
45 suspected release.

1 (b) Excavation, removal and transportation of contaminated soil and
2 its treatment or disposal.

3 (c) Treatment of contaminated soil by vapor extraction, chemical or
4 physical stabilization, soil washing or biological treatment to reduce the
5 concentration, toxicity or mobility of a contaminant.

6 (d) Pumping and treatment or in situ treatment of contaminated
7 groundwater or surface water to reduce the concentration or toxicity of a
8 contaminant.

9 (e) The installation of structures, such as cutoff walls or caps, to
10 contain contaminants present in groundwater or soil and prevent them from
11 reaching a location where they could threaten human health or welfare or the
12 environment.

13 This paragraph does not include asbestos removal or the construction or use
14 of ancillary structures such as maintenance sheds, offices or storage
15 facilities for unattached equipment, pollution control equipment, facilities
16 or other control items required or to be used by a person to prevent or
17 control contamination before it reaches the environment.

18 7. The gross proceeds of sales or gross income that is derived from a
19 contract entered into for the installation, assembly, repair or maintenance
20 of machinery, equipment or other tangible personal property that is deducted
21 from the tax base of the retail classification pursuant to section 42-5061,
22 subsection B, or that is exempt from use tax pursuant to section 42-5159,
23 subsection B, and that does not become a permanent attachment to a building,
24 highway, road, railroad, excavation or manufactured building or other
25 structure, project, development or improvement. If the ownership of the
26 realty is separate from the ownership of the machinery, equipment or tangible
27 personal property, the determination as to permanent attachment shall be made
28 as if the ownership were the same. The deduction provided in this paragraph
29 does not include gross proceeds of sales or gross income from that portion of
30 any contracting activity which consists of the development of, or
31 modification to, real property in order to facilitate the installation,
32 assembly, repair, maintenance or removal of machinery, equipment or other
33 tangible personal property that is deducted from the tax base of the retail
34 classification pursuant to section 42-5061, subsection B or that is exempt
35 from use tax pursuant to section 42-5159, subsection B. For the purposes of
36 this paragraph, "permanent attachment" means at least one of the following:

37 (a) To be incorporated into real property.

38 (b) To become so affixed to real property that it becomes a part of
39 the real property.

40 (c) To be so attached to real property that removal would cause
41 substantial damage to the real property from which it is removed.

42 8. Through December 31, 2009, the gross proceeds of sales or gross
43 income received from a contract for constructing any lake facility
44 development in a commercial enhancement reuse district that is designated
45 pursuant to section 9-499.08 if the prime contractor maintains the following

1 records in a form satisfactory to the department and to the city or town in
2 which the property is located:

3 (a) The certificate of qualification of the lake facility development
4 issued by the city or town pursuant to section 9-499.08, subsection D.

5 (b) All state and local transaction privilege tax returns for the
6 period of time during which the prime contractor received gross proceeds of
7 sales or gross income from a contract to construct a lake facility
8 development in a designated commercial enhancement reuse district, showing
9 the amount exempted from state and local taxation.

10 (c) Any other information that the department considers to be
11 necessary.

12 9. The gross proceeds of sales or gross income attributable to the
13 purchase of machinery, equipment or other tangible personal property that is
14 exempt from or deductible from transaction privilege and use tax under:

15 (a) Section 42-5061, subsection A, paragraph 25 or 29.

16 (b) Section 42-5061, subsection B.

17 (c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b),
18 (c), (d), (e), (f), (i), (j) or (l).

19 (d) Section 42-5159, subsection B.

20 10. The gross proceeds of sales or gross income received from a
21 contract for the construction of an environmentally controlled facility for
22 the raising of poultry for the production of eggs and the sorting, cooling
23 and packaging of eggs.

24 11. The gross proceeds of sales or gross income that is derived from a
25 contract entered into with a person who is engaged in the commercial
26 production of livestock, livestock products or agricultural, horticultural,
27 viticultural or floricultural crops or products in this state for the
28 construction, alteration, repair, improvement, movement, wrecking or
29 demolition or addition to or subtraction from any building, highway, road,
30 excavation, manufactured building or other structure, project, development or
31 improvement used directly and primarily to prevent, monitor, control or
32 reduce air, water or land pollution.

33 12. The gross proceeds of sales or gross income that is derived from
34 the installation, assembly, repair or maintenance of clean rooms that are
35 deducted from the tax base of the retail classification pursuant to section
36 42-5061, subsection B, paragraph 17.

37 13. For taxable periods beginning from and after June 30, 2001, the
38 gross proceeds of sales or gross income derived from a contract entered into
39 for the construction of a residential apartment housing facility that
40 qualifies for a federal housing subsidy for low income persons over sixty-two
41 years of age and that is owned by a nonprofit charitable organization that
42 has qualified under section 501(c)(3) of the internal revenue code.

43 14. For taxable periods beginning from and after December 31, 1996 and
44 ending before January 1, 2011, the gross proceeds of sales or gross income
45 derived from a contract to provide and install a solar energy device. The

1 contractor shall register with the department as a solar energy
2 contractor. By registering, the contractor acknowledges that it will make
3 its books and records relating to sales of solar energy devices available to
4 the department for examination.

5 15. The gross proceeds of sales or gross income derived from a contract
6 entered into for the construction of a launch site, as defined in 14 Code of
7 Federal Regulations section 401.5.

8 16. The gross proceeds of sales or gross income derived from a contract
9 entered into for the construction of a domestic violence shelter that is
10 owned and operated by a nonprofit charitable organization that has qualified
11 under section 501(c)(3) of the internal revenue code.

12 17. The gross proceeds of sales or gross income derived from contracts
13 to perform postconstruction treatment of real property for termite and
14 general pest control, including wood destroying organisms.

15 18. The gross proceeds of sales or gross income received from contracts
16 entered into before July 1, 2006 for constructing a state university research
17 infrastructure project if the project has been reviewed by the joint
18 committee on capital review before the university enters into the
19 construction contract for the project. For the purposes of this paragraph,
20 "research infrastructure" has the same meaning prescribed in section 15-1670.

21 19. The gross proceeds of sales or gross income received from a
22 contract for the construction of any building, or other structure, project,
23 development or improvement owned by a qualified business under section
24 41-1516 for harvesting or the initial processing of qualifying forest
25 products removed from qualifying projects as defined in section 41-1516 if
26 actual construction begins before January 1, 2010. To qualify for this
27 deduction, the prime contractor must obtain a letter of qualification from
28 the department of commerce before beginning work under the contract.

29 20. The gross proceeds of sales or gross income received from a
30 contract for the construction of any building or other structure associated
31 with motion picture production in this state. To qualify for the deduction,
32 at the time the contract is entered into the motion picture production
33 company must present to the prime contractor its certificate that is issued
34 pursuant to section 42-5009, subsection H and that establishes its
35 qualification for the deduction.

36 21. Any amount of the gross proceeds of sales or gross income from a
37 contract that constitutes development or impact fees paid to the state or a
38 local government to offset governmental costs of providing public
39 infrastructure, public safety and other public services to a development.

40 22. FOR TAXABLE PERIODS BEGINNING FROM AND AFTER DECEMBER 31, 2007, THE
41 GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM A CONTRACT ENTERED INTO
42 FOR THE ORIGINAL CONSTRUCTION OF SINGLE FAMILY RESIDENTIAL HOUSING THAT IS
43 OWNED BY A NONPROFIT CHARITABLE ORGANIZATION THAT HAS QUALIFIED UNDER SECTION
44 501(c)(3) OF THE INTERNAL REVENUE CODE. TO QUALIFY FOR THE DEDUCTION THE
45 PRIME CONTRACTOR MUST RECEIVE FROM THE NONPROFIT CHARITABLE ORGANIZATION A

1 COPY OF THE WRITTEN CERTIFICATE THAT WAS ISSUED TO THE NONPROFIT CHARITABLE
2 ORGANIZATION BY THE ARIZONA DEPARTMENT OF HOUSING PURSUANT TO SECTION
3 41-3953, SUBSECTION J. THE DEDUCTION SHALL NOT EXCEED FIVE THOUSAND DOLLARS.

4 C. Entitlement to the deduction pursuant to subsection B, paragraph 7
5 of this section is subject to the following provisions:

6 1. A prime contractor may establish entitlement to the deduction by
7 both:

8 (a) Marking the invoice for the transaction to indicate that the gross
9 proceeds of sales or gross income derived from the transaction was deducted
10 from the base.

11 (b) Obtaining a certificate executed by the purchaser indicating the
12 name and address of the purchaser, the precise nature of the business of the
13 purchaser, the purpose for which the purchase was made, the necessary facts
14 to establish the deductibility of the property under section 42-5061,
15 subsection B, and a certification that the person executing the certificate
16 is authorized to do so on behalf of the purchaser. The certificate may be
17 disregarded if the prime contractor has reason to believe that the
18 information contained in the certificate is not accurate or complete.

19 2. A person who does not comply with paragraph 1 of this subsection
20 may establish entitlement to the deduction by presenting facts necessary to
21 support the entitlement, but the burden of proof is on that person.

22 3. The department may prescribe a form for the certificate described
23 in paragraph 1, subdivision (b) of this subsection. The department may also
24 adopt rules that describe the transactions with respect to which a person is
25 not entitled to rely solely on the information contained in the certificate
26 provided in paragraph 1, subdivision (b) of this subsection but must instead
27 obtain such additional information as required in order to be entitled to the
28 deduction.

29 4. If a prime contractor is entitled to a deduction by complying with
30 paragraph 1 of this subsection, the department may require the purchaser who
31 caused the execution of the certificate to establish the accuracy and
32 completeness of the information required to be contained in the certificate
33 which would entitle the prime contractor to the deduction. If the purchaser
34 cannot establish the accuracy and completeness of the information, the
35 purchaser is liable in an amount equal to any tax, penalty and interest which
36 the prime contractor would have been required to pay under article 1 of this
37 chapter if the prime contractor had not complied with paragraph 1 of this
38 subsection. Payment of the amount under this paragraph exempts the purchaser
39 from liability for any tax imposed under article 4 of this chapter. The
40 amount shall be treated as a transaction privilege tax to the purchaser and
41 as tax revenues collected from the prime contractor in order to designate the
42 distribution base for purposes of section 42-5029.

43 D. Subcontractors or others who perform services in respect to any
44 improvement, building, highway, road, railroad, excavation, manufactured
45 building or other structure, project, development or improvement are not

1 subject to tax if they can demonstrate that the job was within the control of
2 a prime contractor or contractors or a dealership of manufactured buildings
3 and that the prime contractor or dealership is liable for the tax on the
4 gross income, gross proceeds of sales or gross receipts attributable to the
5 job and from which the subcontractors or others were paid.

6 E. Amounts received by a contractor for a project are excluded from
7 the contractor's gross proceeds of sales or gross income derived from the
8 business if the person who hired the contractor executes and provides a
9 certificate to the contractor stating that the person providing the
10 certificate is a prime contractor and is liable for the tax under article 1
11 of this chapter. The department shall prescribe the form of the
12 certificate. If the contractor has reason to believe that the information
13 contained on the certificate is erroneous or incomplete, the department may
14 disregard the certificate. If the person who provides the certificate is not
15 liable for the tax as a prime contractor, that person is nevertheless deemed
16 to be the prime contractor in lieu of the contractor and is subject to the
17 tax under this section on the gross receipts or gross proceeds received by
18 the contractor.

19 F. Every person engaging or continuing in this state in the business
20 of prime contracting or dealership of manufactured buildings shall present to
21 the purchaser of such prime contracting or manufactured building a written
22 receipt of the gross income or gross proceeds of sales from such activity and
23 shall separately state the taxes to be paid pursuant to this section.

24 G. For the purposes of section 42-5032.01, the department shall
25 separately account for revenues collected under the prime contracting
26 classification from any prime contractor engaged in the preparation or
27 construction of a multipurpose facility, and related infrastructure, that is
28 owned, operated or leased by the tourism and sports authority pursuant to
29 title 5, chapter 8.

30 H. The gross proceeds of sales or gross income derived from a contract
31 for lawn maintenance services are not subject to tax under this section if
32 the contract does not include landscaping activities. Lawn maintenance
33 service is a service pursuant to section 42-5061, subsection A, paragraph 1,
34 and includes lawn mowing and edging, weeding, repairing sprinkler heads or
35 drip irrigation heads, seasonal replacement of flowers, refreshing gravel,
36 lawn de-thatching, seeding winter lawns, leaf and debris collection and
37 removal, tree or shrub pruning or clipping, garden and gravel raking and
38 applying pesticides, as defined in section 3-361, and fertilizer materials,
39 as defined in section 3-262.

40 I. The gross proceeds of sales or gross income derived from
41 landscaping activities are subject to tax under this section. Landscaping
42 includes installing lawns, grading or leveling ground, installing gravel or
43 boulders, planting trees and other plants, felling trees, removing or
44 mulching tree stumps, removing other imbedded plants, building or modifying

1 irrigation berms, repairing sprinkler or watering systems, installing
2 railroad ties and installing underground sprinkler or watering systems.

3 J. The portion of gross proceeds of sales or gross income attributable
4 to the actual direct costs of providing architectural or engineering services
5 that are incorporated in a contract is not subject to tax under this
6 section. For the purposes of this subsection, "direct costs" means the
7 portion of the actual costs that are directly expended in providing
8 architectural or engineering services.

9 K. Operating a landfill or a solid waste disposal facility is not
10 subject to taxation under this section, including filling, compacting and
11 creating vehicle access to and from cell sites within the
12 landfill. Constructing roads to a landfill or solid waste disposal facility
13 and constructing cells within a landfill or solid waste disposal facility may
14 be deemed prime contracting under this section.

15 L. The following ~~applies~~ APPLY to manufactured buildings:

16 1. For sales in this state where the ~~dealer~~ DEALERSHIP of manufactured
17 buildings contracts to deliver the building to a setup site or to perform the
18 setup in this state, the taxable situs is the setup site.

19 2. For sales in this state where the ~~dealer~~ DEALERSHIP of manufactured
20 buildings does not contract to deliver the building to a setup site or does
21 not perform the setup, the taxable situs is the location of the dealership
22 where the building is delivered to the buyer.

23 3. For sales in this state where the ~~dealer~~ DEALERSHIP of manufactured
24 buildings contracts to deliver the building to a setup site that is outside
25 this state, the situs is outside this state and the transaction is excluded
26 from tax.

27 M. For the purposes of this section:

28 1. "Contracting" means engaging in business as a contractor.

29 2. "Contractor" is synonymous with the term "builder" and means any
30 person, firm, partnership, corporation, association or other organization, or
31 a combination of any of them, that undertakes to or offers to undertake to,
32 or purports to have the capacity to undertake to, or submits a bid to, or
33 does personally or by or through others, construct, alter, repair, add to,
34 subtract from, improve, move, wreck or demolish any building, highway, road,
35 railroad, excavation, manufactured building or other structure, project,
36 development or improvement, or to do any part of such a project, including
37 the erection of scaffolding or other structure or works in connection with
38 such a project, and includes subcontractors and specialty contractors. For
39 all purposes of taxation or deduction, this definition shall govern without
40 regard to whether or not such contractor is acting in fulfillment of a
41 contract.

42 3. "Dealership of manufactured buildings" means a dealer who either:

43 (a) Is licensed pursuant to title 41, chapter 16 and who sells
44 manufactured buildings to the final consumer.

- 1 (b) Supervises, performs or coordinates the excavation and completion
2 of site improvements, setup or moving of a manufactured building including
3 the contracting, if any, with any subcontractor or specialty contractor for
4 the completion of the contract.
- 5 4. "Manufactured building" means a manufactured home, mobile home or
6 factory-built building, as defined in section 41-2142.
- 7 5. "Prime contracting" means engaging in business as a prime
8 contractor.
- 9 6. "Prime contractor" means a contractor who supervises, performs or
10 coordinates the construction, alteration, repair, addition, subtraction,
11 improvement, movement, wreckage or demolition of any building, highway, road,
12 railroad, excavation, manufactured building or other structure, project,
13 development or improvement including the contracting, if any, with any
14 subcontractors or specialty contractors and who is responsible for the
15 completion of the contract.
- 16 7. "Sale of a used manufactured building" does not include a lease of
17 a used manufactured building.